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No. 88-1924

In The

Supreme Court of the United States

October Term, 1988

EDWARD LaMON and LORRAINE LaMON,

Petitioners,

v.

BETTY BUTLER and THE DAILY WORLD, a Corporation,

Respondents.

On Petition For Writ Of Certiorari
To The Supreme Court Of The State of Washington

RESPONDENTS' BRIEF IN OPPOSITION

CURTIS M. JANHUNEN
Of –
BROWN EDWARDS LEWIS & JANHUNEN
101 East Market, Suite 501
Aberdeen, Washington 98520
(206) 533-1600

Attorneys for Respondents

June 26, 1989

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OR CALL COLLECT (402) 342-2831

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QUESTIONS PRESENTED

I.

Did the Petitioners present a prima facie case of negligence sufficient to defeat a Motion for Summary Judgment?

II.

Did the Motion for Summary Judgment provide Petitioners with notice that they were required to present a prima facie case on each of the four essential elements of defamation in order to defeat Respondents' Motion for Summary Judgment?

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RESPONDENTS' BRIEF IN OPPOSITION

Respondents oppose the Petition for Writ of Certiorari. Certiorari should be denied for the reason that the decision of the Supreme Court of the State of Washington is not in conflict with other reported appellate decisions and the issues decided by that Court are not significant enough to warrant such review.

OPINIONS

The opinions of the lower courts are found in the Appendix to the Petition for Writ of Certiorari.

STATEMENT OF FACTS

The facts of this case appear in both the Court of Appeals decision (Petitioners' App. at 57-67) and the Supreme Court opinions (Petitioners' App. at 1-56). The Petition contains factual assertions not found in the evidence considered by either the trial court or the two state appellate courts which heard the appeals. It is important to note that the attempt to supplement the record before the Washington Supreme Court by filing an affidavit from William Morgan, Westport City Attorney, was rejected. (Petitioners' App. at 34-35).

REASONS FOR DENYING THE PETITION

The Petitioners have framed the questions presented by their Petition in such a fashion as to fit within the

considerations governing review by certiorari. However, the questions are not presented by the decisions of the Washington Supreme Court.

The Washington Supreme Court pointed out in its opinion that under Washington law a defamation plaintiff must show four essential elements: falsity, an unprivileged communication, fault, and damages. The court repeated the requirement that to survive the defendants' Motion for Summary Judgment, the plaintiffs had to present a prima facie case on each element, including fault. (Petitioners' App. at 7, 8).

The court reviewed the evidence presented by Petitioners and concluded that they had not met their burden of making out such a prima facie case of falsity. Under Washington law, as the court pointed out, the moving party is entitled to summary judgment when reasonable persons giving all reasonable inferences to the nonmoving party, can only conclude that the moving party is entitled to judgment. (Petitioners' App. at 34-35). In deciding this issue under Washington law, the appellate court engages in the same inquiry as the trial court. *Wilson vs. Steinbach*, 98 Wn.2d 434, 437, 656 P.2d 1030 (1982). The Washington Supreme Court, the Court of Appeals, and the trial judge all engaged in the same inquiry and concluded that a reasonable trier of fact in this case could reach but one conclusion from the evidence: the defendants did not act negligently. Summary judgment was properly entered against them.

The Petitioners argue, however, that even if on this record summary judgment was proper, it should nev-

ertheless not have been entered because they had insufficient notice that the summary judgment hearing would include the issue of fault. As the Washington Supreme Court stated, the Petitioners' received notice through the Respondents' Memorandum that they were required to make out a prima facie case on the four essential elements of defamation under Washington law. They did not do so. The affidavit of Betty Butler went uncontroverted. It clearly established the absence of any negligence on her part.

Finally, under Washington law the trial judge's decision must be sustained if supported by any theory established by the pleadings and supported by the proof. (Petitioners' App. at 37).

CONCLUSION

The decision of the Washington Supreme Court is not in conflict with any other appellate decision. It is firmly based upon prior opinions of that court interpreting Washington law and procedure. There are no special or important reasons to justify the grant of the Petition. It should be denied.

Respectfully submitted,

CURTIS M. JANHUNEN
Of –
BROWN EDWARDS LEWIS & JANHUNEN
101 East Market, Suite 501
Aberdeen, Washington 98520

Attorneys for Respondents

June 26, 1989